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MOHD HAFIZUDDIN MOHD KHAR v. AMBANK (M) BHD; TAN SIEW HOON & ORS (THIRD PARTY) AND ANOTHER APPEAL

HIGH COURT MALAYA, IPOH
MOSES SUSAYAN JC
B [CIVIL APPEAL NOS: AA-12ANCC-1-01-2024
& AA-12ANCC-2-01-2024]
24 FEBRUARY 2025

C **Abstract** – *(i) A vesting order legally transfers all rights, liabilities and obligations related to specified debts or assets from one party, ie, the transferor, to another, ie, the transferee. Any legal proceedings related to those transferred liabilities, initiated after the effective date of the vesting order, must be pursued against the transferee and not the transferor. If*
D *a vesting order is valid and applies to the subject matter of a lawsuit, the transferor is no longer a proper party to the proceedings, and any claim against them is unsustainable; (ii) A third-party claim based solely on indemnity cannot stand when the primary claim or the main action has been struck out as there is no underlying liability to justify seeking indemnity.*

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CIVIL PROCEDURE: *Parties – Cause of action – Claimant and bank entered into hire purchase agreement to finance purchase of vehicle – Discovery that vehicle was stolen and linked to earlier police report – Claimant claimed against bank for negligence, misrepresentation and breach of contract – Whether bank liable –*
F *Whether rights, liabilities and obligations under hire purchase agreement transferred to another by way of vesting order – Whether bank proper party to be sued – Whether bank responsible for contractual obligations – Whether claimant had valid cause of action against bank in light of vesting order*

G ***CIVIL PROCEDURE:*** *Striking out – Disposal of action – Claimant and bank entered into hire purchase agreement to finance purchase of vehicle – Discovery that vehicle was stolen and linked to earlier police report – Claimant claimed against bank at Sessions Court for negligence, misrepresentation and breach of contract – Rights, liabilities and obligations of bank under hire purchase agreement transferred*
H *to another by way of vesting order – Whether Sessions Court correct in striking out claim – Whether Sessions Court correct – Whether claim unsustainable and ought to be struck out – Rules of Court 2012, O. 14A & O. 33 rr. 2, 5*

CIVIL PROCEDURE: *Third-party proceedings – Effect of striking out of main action – Claimant and bank entered into hire purchase agreement to finance*
I *purchase of vehicle – Discovery that vehicle was stolen and linked to earlier police report – Claimant claimed against bank at Sessions Court for negligence,*

misrepresentation and breach of contract – Sessions Court struck out claim – Bank initiated third-party proceedings against third parties that played respective roles in verifying vehicle's genuineness – Whether bank had valid indemnity claims against third parties – Whether third-party proceedings ought to continue independently despite main claim being struck out

The appellant had entered into a hire purchase agreement with the respondent to finance a vehicle. Before finalising the agreement, the appellant had the vehicle inspected by PUSPAKOM, obtaining a B5 certificate confirming its genuine condition. Relying on this certification, the respondent approved the hire purchase financing. However, the vehicle was seized by the Road Transport Department on suspicion of tampered engine and chassis numbers. A chemical report confirmed that the vehicle was indeed stolen and linked to an earlier police report in 2013. This discovery prompted the appellant to claim against the respondent, at the Sessions Court, alleging negligence, misrepresentation and breach of contract due to the respondent's failure to verify the genuineness of the vehicle before financing the transaction. The respondent, in response, contended that all rights, liabilities and obligations under the hire purchase agreement had been transferred to Aiqon Amanah Sdn Bhd ('Aiqon Amanah') *via* a sale and purchase agreement, followed by a vesting order. Consequently, the respondent argued that it was no longer liable for the appellant's claim. The Sessions Court Judge ('SCJ') struck out the appellant's claim. Separately, the respondent initiated third-party proceedings against (i) the sellers of the vehicle; (ii) PUSPAKOM, which issued the B5 certificate; and (iii) the Director of the Perak Road Transport Department who was responsible for maintaining vehicle registration records. The SCJ proceeded to strike out the respondent's third-party notice. Hence, the present appeal by both the appellant and the respondent against the decisions of the SCJ. The issues that arose for determination were: (i) whether the appellant had a valid cause of action against the respondent in light of the vesting order; (ii) whether the SCJ erred in striking out the appellant's claim, pursuant to O. 14A and/or O. 33 rr. 2 and 5 of the Rules of Court 2012 ('ROC'); and (iii) whether the third-party proceedings was sustainable and should continue despite the main claim being struck out.

Held (dismissing appeals):

(1) Pursuant to cl. 3.13 of the vesting order, all legal, arbitration, tribunal and other proceedings related to the vesting order debts that were pending immediately before the transfer date, *ie*, 22 February 2019 and in which the respondent was a party may continue as if Aiqon Amanah had been a party instead of the respondent. This meant that, after 22 February 2019, Aiqon Amanah assumed all legal responsibilities and liabilities of the respondent in ongoing proceedings, effectively substituting Aiqon Amanah as the proper party in place of the

respondent. Therefore, the entity legally to be named as a party in the proceedings was Aiqon Amanah because, by reason of cl. 3.13, the one responsible for any contractual obligations at the time of the lawsuit was Aiqon Amanah, not the respondent. The SCJ correctly determined that the appellant's claim against the respondent was unsustainable in law. The vesting order, being a legal instrument, effectively transferred all rights and liabilities to Aiqon Amanah. The respondent no longer had any legal obligations towards the appellant at the time the suit was filed in 2019. (paras 18, 19 & 21)

(2) The existence of the vesting order was undisputed. The SCJ: (i) had determined that there was no reasonable cause of action against the respondent, justifying the decision to strike out the claim without proceeding to trial; (ii) did not err in striking out the appellant's claim under O. 14A and O. 33 rr. 2 and 5 of the ROC; and (iii) had correctly exercised his discretion by determining that the matter could be disposed of without a full trial based on undisputed documentary evidence, particularly the vesting order and the sale and purchase agreements between the respondent and Aiqon Amanah. (paras 23 & 25)

(3) Having dismissed the main action, there was no purpose in maintaining the third-party action as there was no liability attached to the respondent that would justify seeking indemnity from third parties. (para 32)

Case(s) referred to:

Abdul Kashab Hj Hanafi v. Hong Leong Bank Bhd [2016] 8 CLJ 487 HC ***(refd)***

Chang Chor Heong & Anor v. Puncak Kencana Sdn Bhd; Lim Kim Kee & Anor (Third Party) [2008] CLJU 384; [2008] 1 LNS 384 HC ***(refd)***

Inai Bina Sdn Bhd v. Mohd Rizzal Shamat (Trading As Kejuruteraan Perdana Teguh); Bintang Kencana Sdn Bhd (Third Party) [2015] CLJU 674; [2015] 1 LNS 674 HC ***(refd)***

KM N SP N Valliammai Achi (F) v. ARS Nachiappa Chettiar [1956] CLJU 48; [1956] 1 LNS 48 HC ***(refd)***

KPS-HCM Sdn Bhd v. Shahrul Izewan Mat Husin & Ors [2018] 6 CLJ 772 HC ***(refd)***

Loh Wai Lian v. Sea Housing Corp Sdn Bhd [1984] 2 CLJ 160; [1984] 1 CLJ (Rep) 223 FC ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd [2010] 1 CLJ 665 FC ***(refd)***

Stott v. West Yorkshire Road Car Co Ltd [1971] 3 All ER 534 ***(refd)***

Legislation referred to:

Banking and Financial Institutions Act 1989 (Repealed), s. 50(3)
Financial Services Act 2013, s. 104(2)
Rules of Court 2012, O. 14A, O. 16 r. 6, O. 33 rr. 2, 5
Sale of Goods Act 1957, s. 14(a)

For the appellant - Muhammad Wafi Abdullah & T Manoharan; M/s Krish Mano & Assocs
For the 1st respondent - Shassidaren Deva Sana Pathy & Jeyaramm Rajan; M/s Maxwell Kenion Cowdy
For the 2nd respondent - Siti Norashikin Hassanor; SFC
For the 5th respondent - Kenneth Koh & Afiq Iskandar Aziz; M/s Xavier & Koh Partnership

Reported by Najib Tamby

JUDGMENT

Moses Susayan JC:

Introduction

[1] This case concerns a dispute arising from a hire purchase vehicle gone wrong. The appellant, having purchased a car through hire purchase from the respondent bank, later discovered that the car was stolen. Alleging negligence, he sued the respondent bank for failing to ensure the vehicle's genuineness before approving the financing. The respondent, however, contended that all rights and liabilities had been transferred to another entity under a vesting order, absolving it of any responsibility. Simultaneously, the respondent initiated third-party proceedings against various other entities involved in the verification process, arguing that they should bear liability.

[2] The two key issues for determination are whether the respondent remained liable despite the vesting order and whether the third-party claims were sustainable and could proceed independently.

Background Facts

[3] On 6 September 2013, the appellant, Mohd Hafizuddin bin Mohd Khar, entered into a hire purchase agreement with respondent, Ambank (M) Berhad to finance a Honda Civic S i-VTEC (A) 2.0i (registration number WUV 2939). Before finalising the agreement, the appellant had the vehicle inspected by PUSPAKOM, obtaining a B5 certificate confirming its genuine condition. Relying on this certification, the respondent approved the hire purchase financing.

[4] However, on 28 December 2015, the vehicle was seized by the Road Transport Department on suspicion of tampered engine and chassis numbers. A chemical report dated 8 January 2016 confirmed that the vehicle was stolen and linked to an earlier police report in 2013. Following this discovery, the appellant initiated a lawsuit against the respondent on 29 August 2019, alleging negligence for financing a stolen car without proper verification.

[5] In response, the respondent contended that all rights, liabilities, and obligations under the hire purchase agreement had been transferred to Aiqon Amanah Sdn Bhd ("Aiqon Amanah") *via* a sale and purchase agreement on

A 3 January 2019, followed by a vesting order dated 19 February 2019. Consequently, the respondent argued that it was no longer liable for the appellant's claim. The Sessions Court struck out the appellant's claim under O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012, leading to the first appeal (AA-12ANCC-1-01-2024).

B **[6]** Separately, the respondent had initiated third-party proceedings against:

(i) Tan Siew Hoon and Ong Keng Hoe (TP1 & TP2), the sellers of the vehicle;

C (ii) PUSPAKOM Sdn Bhd (TP3), which issued the B5 certificate; and

(iii) the Director of the Perak Road Transport Department (TP4), responsible for maintaining vehicle registration records.

[7] The respondent argued that these third parties played a role in
D verifying the vehicle's genuineness and should bear responsibility. However, the Sessions Court strike out the third-party notices. The respondent then filed the second appeal (AA-12ANCC-2-01-2024), contending that the dismissal was erroneous.

Issues For Determination

E **[8]** The court is to determine the following issues:

(i) whether the appellant has a valid cause of action against the respondent in light of the vesting order.

(ii) whether the Sessions Court Judge erred in striking out the appellant's
F claim under O. 14A and/or O. 33 rr. 2 and 5 of the Rules of Court 2012.

(iii) whether the third-party proceedings is sustainable and should continue despite the main claim being struck out.

Issue 1: Whether The Appellant Has Valid Cause Of Action Against The
G **Respondent**

[9] The primary issue in this appeal is whether the appellant, has a valid cause of action against the respondent, in light of the vesting order dated 19 February 2019. The respondent asserts that all rights, liabilities, and obligations concerning the appellant's loan account were transferred to
H Aiqon Amanah through a sale and purchase agreement dated 3 January 2019 and a supplemental agreement dated 30 August 2019. Clauses 8 and 8.6 in the sale and purchase agreement dated 3 January 2019 state, provides:

8. Post Transfer Obligations

I 8.6 Post Completion.

(a) After the Transfer Date, the Buyer shall manage the Debts on its own account. The Buyer shall at all times:-

(i) ensure that it has adequate systems to manage the Debt; A

(ii) not do, cause to be done, omit to be done or cause to be omitted and shall cause its agents and successors in title accordingly not to do, cause to be done, omit to be done or cause to be omitted anything which could damage or which presents a risk of damage to the reputation, integrity and high standards of the Seller. B

...

(vii) retain all rights, titles, interests and benefits of the Debts and shall not dispose, assign and/or transfer any rights, titles, interest and benefits of the Debts to any party. C

(b) *The Buyer shall fully indemnify the Seller* from and against any damage, losses, liabilities, costs, claims, charges, expenses, actions or demands which the Seller may incur or which may be made, claimed, or instituted against the Seller by any person as a result of or in connection with any breach by the Buyer of its obligations under Clause 8.6(a) above or any failure or omission by the Buyer to comply with Clause 8.6(a) above. (emphasis added) D

[10] The appellant, however, contends that the transfer of liability does not absolve the respondent of prior breaches and misrepresentations relating to the hire purchase agreement. E

[11] The facts indicate that after the hire purchase agreement with the respondent on 6 September 2013, the vehicle was confiscated by the Road Transport Department on 28 December 2015. The appellant subsequently initiated legal proceedings against the respondent in 2019, alleging negligence, misrepresentation, and breach of contract due to the respondent's failure to verify the genuineness of the vehicle before financing the transaction. F

[12] The respondent, on the other hand, argues that the vesting order conclusively transferred all existing liabilities to Aiqon Amanah, rendering it the proper party to be sued. Under the vesting order, all legal proceedings and obligations related to the loan account were assigned to Aiqon Amanah. The following paragraphs from the vesting order dated 19 February 2019, confirm the assignment (append below the English translation): G

2. that the VO Debts which constituted part of the Transferor's banking business, together with all prevailing rights, benefits and interests of the Transferor under the Associated Loan Documents shall be transferred to and vest in the Transferee with effect on and from the Transfer Date: H

3.2 any account and/or loan between the Transferor and its Debtors shall become an account and/or Loan between the Transferee and the Debtors, subject to the same conditions and incidents existed between the Transferor and its Debtors, and such account to be deemed for all purposes to be a single continuing account and/or single continuing Loan; I

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3.11 In respect of any right or liability of the Transferor transferred to the Transferee pursuant to the Vesting Order, the Transferee shall have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or Loan Proceedings or making or resisting applications to any authority) for ascertaining, protecting or

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enforcing that right or resisting that liability of the Transferor as if it had at all times been a right or liability of the Transferee, including those rights or liabilities in respect of any legal proceedings or Loan Proceedings or applications to any authority pending immediately before the Transfer Date by or against the Transferor;

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3.13 all Court Deposit as at the Transfer Date belongs to the Transferee;

[13] Thus, any claims arising from the hire purchase agreement should have been directed at Aiqon Amanah rather than the respondent. This

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position was upheld by the Sessions Court, on which grounds the learned Session Court Judge struck out the appellant's claim under O. 14A and/or O. 33 rr. 2 and 5 of the Rules of Court 2012.

[14] The appellant challenges that the respondent never informed him of the transfer of rights and obligations to Aiqon Amanah. The appellant argues

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that the cause of action against the respondent was already established when the vehicle was confiscated in 2015, long before the vesting order came into effect. The appellant relies on the principle that a cause of action accrues the moment a contractual breach or tortious act occurs, as established in *Loh Wai Lian v. Sea Housing Corp Sdn Bhd* [1984] 2 CLJ 160; [1984] 1 CLJ (Rep) 223;

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[1984] 2 MLJ 280; [1984] 1 MLRA 143; [1983] 1 MLRH 416. In that case, the Federal Court held that a right to sue arises upon a breach of contract and that time runs from the date of the breach, not from the date of subsequent developments. Similarly, the appellant here argues that his claim against the respondent predates the vesting order and should not be invalidated by the

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subsequent transfer of obligations.

[15] The respondent, on the other hand, maintains that the Sessions Court had correctly dismissed the claim, citing the binding nature of the vesting order. The respondent further relies on the case of *Abdul Kashab Hj Hanafi v. Hong Leong Bank Bhd* [2016] 8 CLJ 487; [2016] 5 AMR 297, where it

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establishes that a vesting order is effective upon issuance, regardless of whether affected parties were notified. Under s. 104(2) of the Financial Services Act 2013, similar to s. 50(3) of the Banking and Financial Institutions Act 1989 (BAFIA), vesting order have the effect of all rights, liabilities, and interests automatically transfer to the assignee. The

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respondent submits that, based on this principle, the appellant is bound by the 3 January 2019 sale and purchase agreement between the respondent and Aiqon Amanah. His Lordship Justice Mohd Nazlan Ghazali in *Abdul Kashab Hj Hanafi* (*supra*) states:

Issue 4 - Vesting Order Not Served On Appellant

[33] *The argument that the appellant did not get the notice of the vesting of the HP agreement and the hire purchase facility from EON Bank Bhd to Hong Leong Bank Bhd is similarly lacking in merit* in view of the clear language of s. 50(3) of the former Banking and Financial Institutions Act 1989 which was in force at the time of the vesting of all assets and liabilities of the former to the latter, and which stipulated that such transfer to be effective on the transfer date referred to in the order of the High Court notwithstanding any law or rule of law. The vesting order is all encompassing (see *Phileo Allied Bank (Malaysia) Bhd v. Koshish Credit & Leasing Sdn Bhd* [2001] 4 CLJ 788 and the Court of Appeal decision in *Leong Moh Sawmill Co Sdn Bhd v. Standard Chartered Bank & Ors* [1997] 2 CLJ 131). The entirety of s. 50(3) is reproduced below:

> (3) *Where the order of the High Court under subsection (1) provides for the transfer of any property or business vested in or held by the transferor, either alone or jointly with any other person, then, by virtue of the order, that property or business shall, on and from the transfer date, become vested in or held by the transferee either alone or, as the case may be, jointly with such other person, and the order shall have effect according to its terms notwithstanding anything in any law or in any rule of law, and shall be binding on any person thereby affected, regardless that the person so affected is not a party to the proceedings under this section or any other related proceedings, or had no notice* of the proceedings under this section or of other related proceedings.

[34] As such the appellant's complaint about not having been informed about the vesting is of no relevance, for the law made it manifest that the vesting took effect nevertheless. For otherwise, financial institutions would have to enter into a novation in respect of each and every loans and business agreement. As stated in the section, the absence of notification to the customers too does not affect the effectiveness of the transfer, although obviously it would make practical sense if this was done. In fact, although not raised by the respondent, pursuant to s. 50(4), the vesting order must be published in two daily newspapers; one in the national language and the other in English. Although BAFIA has been repealed, similarly worded vesting provisions are enacted in s. 104(2) of the Financial Services Act 2013. In any event, in the instant case, the various statutory notices sent under the HP Act had clearly demonstrated Hong Leong Bank Bhd as the new owner of the car under the HP Act which would be deemed by BAFIA in light of the vesting order, to have been entered into by Hong Leong Bank Bhd from the time it was actually so executed by the original financier owner and the appellant. As such, this contention of the appellant too is devoid of merit.

(emphasis added)

[16] The respondent submits that under the vesting order, Aiqon Amanah effectively stepped into its position as the creditor, meaning that any dispute regarding the hire purchase agreement should be pursued against Aiqon Amanah and not the respondent.

[17] Further, the respondent contends that the appellant was fully aware of the vesting order, as the appellant did not object when the respondent applied to amend its statement of defence in May 2023 to plead vesting order as a defence. The amendment explicitly stated that all liabilities of the respondent had been assigned to Aiqon Amanah. The respondent argues that the appellant's failure to challenge this assignment in a timely manner reinforces the conclusion that no valid cause of action remains against the respondent. Further, the respondent asserts that permitting the claim to proceed would render the vesting order meaningless and thereby go against the terms of a court order.

[18] The appellant's argument that the cause of action accrued before the vesting order is without merit. While it is true that a cause of action accrues at the time of a contractual breach and that is, before the vesting order. The crucial issue is not the date of the breach but whether the correct party has been sued. Pursuant to cl. 3.13 of the vesting order, all legal, arbitration, tribunal, and other proceedings related to the vesting order debts that were pending immediately before the transfer date (22 February 2019) and in which the respondent was a party may continue as if Aiqon Amanah had been party instead of the respondent. This means that after 22 February 2019, Aiqon Amanah assumes all legal responsibilities and liabilities of the respondent in ongoing proceedings, effectively substituting the Aiqon Amanah as the proper party in place of the respondent.

[19] In this case, the entity legally to be named as a party in the proceeding is Aiqon Amanah because by reason of cl. 3.13, the one responsible for any contractual obligations at the time of the lawsuit was Aiqon Amanah, not the respondent. Moreover, the appellant's failure to object to the amendment incorporating the vesting order further weakens his position.

[20] During the oral submissions by the parties at the hearing of the appeal before this court, I was moved by the fact that the appellant is an innocent victim of the circumstances and was constrained to order that the case be remitted to the Sessions Court, with a directive for the appellant to amend the pleadings to include Aiqon Amanah as the respondent so as to enable the appellant to proceed with the action. The respondent objected to this and contended that the appellant had ample opportunity to take the necessary steps, including amending the pleadings, as they were aware of the vesting order as early as May 2023 or should have taken notice when it was advertised in Berita Harian and New Straits Times sometime after 19 February 2019. In this regard, I refrain from intervening, as I am reminded of the words of Justice James Foong FCJ (as he then was) in *RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd* [2010] 1 CLJ 665; [2010] 2 MLJ 188; [2010] 2 AMR 590; [2009] 3 MLRA 162, where he emphasised that the court must not create a defence under the guise of justice. His exact words were:

> On this, we would like to add *that it is not the duty of the court to invent or create a cause of action or a defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other.* The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.
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> (emphasis added)

[21] However, having reviewed the submissions from both parties, I find that the Sessions Court correctly determined that the appellant's claim against the respondent was unsustainable in law. The vesting order, being a legal instrument, effectively transferred all rights and liabilities to Aiqon Amanah. The respondent, therefore, no longer had any legal obligation toward the appellant at the time the suit was filed in 2019. If the appellant wished to pursue a claim, the proper party to be sued was Aiqon Amanah.

[22] Accordingly, this court upholds the Sessions Court's decision to strike out the claim under O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012.

Issue 2: Whether Sessions Court Judge Erred In Striking Out The Claim Pursuant To O. 14A And/Or O. 33 rr. 2 And 5 Of The Rules Of Court 2012

[23] The Sessions Court did not err in striking out the appellant's claim under O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012. The court correctly exercised its discretion by determining that the matter could be disposed of without a full trial based on undisputed documentary evidence, particularly the vesting order dated 19 February 2019 and the sale and purchase agreements between the respondent and Aiqon Amanah.

[24] Pursuant to O. 14A of the Rules of Court 2012, the court is empowered to determine pure questions of law without necessitating a full trial, provided the legal issue is clear and decisive. In *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337; [2004] 1 MLJ 8, the Court of Appeal emphasised the importance of addressing threshold legal issues at an early stage to prevent unnecessary litigation, minimise costs, and avoid prolonged proceedings. At para. 19, p. 354 (CLJ); p. 22 (MLJ), Justice Mohd Noor Ahmad JCA aptly stated:

> ... Therefore, the determination of the threshold issue as preliminary issues will be decisive of the whole litigation or essentially the main part of the suit. Thus, resulting in a substantial saving of time and cost as it will significantly cut down the costs and time involved in pre-trial preparation or in connection with the trial proper.

[25] In the present case, the existence of the vesting order was undisputed, and it conclusively transferred all rights, interests, and liabilities from the respondent to Aiqon Amanah. Given this, the Sessions Court correctly determined that there was no reasonable cause of action against the respondent, thereby justifying the decision to strike out the claim without proceeding to trial.

[26] Similarly, O. 33 rr. 2 and 5 of the Rules of Court 2012 empowers the court to resolve preliminary legal issues before trial if such issues would be decisive to the dispute. The vesting order was a key legal instrument that effectively removed the liability from the respondent, making Aiqon Amanah the rightful party to be sued.

[27] Further, the High Court in *Abdul Kashab Hj Hanafi* (*supra*) ruled that a vesting order takes effect regardless of whether the affected party was notified, and the transfer is valid and binding.

[28] In light of what was stated above, this court finds that the Sessions Court's ruling was correct and in accordance with established principles of procedural efficiency. The decision to strike out the claim was justified as the respondent was no longer the proper party to be sued, and any claim should have been directed against Aiqon Amanah. Therefore, the appeal is dismissed, and the Sessions Court's decision is upheld.

Issue 3: The Second Appeal (AA-12ANCC-2-01-2024) Filed By The Respondent, (Ambank (M) Berhad), Against The Same Sessions Court Decision Regarding Its Order To Cancel Third-Party Notice

[29] The key issue in this appeal is whether the third-party proceedings against TP1, TP2, TP3, and TP4 should continue after the main action has been struck out. Specifically, the court must determine whether such proceedings can stand independently of the main claim. Third-party proceedings are independent claims initiated by the respondent against third parties, primarily for indemnity. The fundamental purpose of O. 16 of the Rules of Court 2012 is to consolidate related disputes and prevent a multiplicity of actions. Courts have emphasised the separate nature of third-party proceedings in cases such as *KM N SP N Valliammai Achi (F) v. ARS Nachiappa Chettiar* [1956] CLJU 48; [1956] 1 LNS 48; [2000] 2 MLRH 513; [1957] 1 MLJ 27 and *KPS-HCM Sdn Bhd v. Shahrul Izewan Mat Husin & Ors* [2018] 6 CLJ 772; [2018] 11 MLJ 481; [2018] AMEJ 0246, where it was held that such proceedings are distinct from the main action between the appellant and the respondent.

[30] The striking out of the main action does not automatically extinguish third-party proceedings. In *Stott v. West Yorkshire Road Car Co Ltd* [1971] 3 All ER 534, the court ruled that third-party claims may continue even if the dispute between the appellant and the respondent has been settled.

However, third-party proceedings may be struck out where they no longer serve a practical purpose. The High Court in *Chang Chor Heong & Anor v. Puncak Kencana Sdn Bhd; Lim Kim Kee (Third Party)* [2008] CLJU 384; [2008] 1 LNS 384; [2008] 8 MLJ 553; [2009] 7 AMR 763; [2008] 5 MLRH 769, held that a third-party claim cannot stand where the respondent's liability towards the appellant has not been established. Similarly, in *Inai Bina Sdn Bhd v. Mohd Rizzal Shamat (Trading As Kejuruteraan Perdana Teguh); Bintang Kencana Sdn Bhd & Anor (Third Party)* [2015] CLJU 674; [2015] 1 LNS 674; [2015] 11 MLJ 360; [2015] AMEJ 755; [2017] MLRHU 362, the court demonstrated that a third-party claim might be struck out if it lacks a reasonable cause of action. Under O. 16 r. 6 of the Rules of Court 2012, the court has the discretion to set aside third-party proceedings at any stage.

[31] In the present case, the respondent seeks indemnity from all third parties (TP1, TP2, TP3 and TP4) for any liability, costs, and damages payable to the appellant, alleging breach of warranties, negligence, and failure to maintain accurate records. TP1 and TP2, as used car dealers, assured the respondent that the vehicle was legally sellable and free from defects. The respondent relied on these assurances when purchasing the vehicle and entering into a hire purchase agreement with the appellant. If the appellant's claim is upheld, TP1 and TP2 would be liable for breach of warranty under s. 14(a) of the Sale of Goods Act 1957 (Act 382), and the respondent seeks indemnity for any costs or damages awarded to the appellant. TP3 (PUSPAKOM Sdn Bhd) is claimed to have failed to conduct proper vehicle inspections or reported incorrect vehicle conditions, as it issued an inspection certificate on 27 August 2013, which the respondent relied upon before entering the hire purchase agreement. If the appellant's claim is successful, the respondent seeks indemnity for any liability arising from TP3's negligence. TP4 (JPJ Perak) is responsible for maintaining accurate vehicle registration records. If the appellant's claim is upheld, it implies TP4 failed to update vehicle records, affecting the vehicle's hire purchase eligibility, and the respondent seeks indemnity for damages caused by inaccurate records. Append below the claims by the respondent against the respective third party:

Tan Siew Hoon dan Ong Keng Hoe
(Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua)

1. Pihak Ketiga Pertama dan Pihak Ketiga yang Kedua, kedua-duanya merupakan rakan kongsi bagi suatu penjual kenderaan terpakai di bawah nama dan gaya Teong Seng Enterprise.

2. Plaintif telah memeriksa satu kereta Honda Civic S i-VTEC (A) 2.0i (Facelift) yang bernombor plat WUV 2939 (selepas ini dikenali sebagai 'kereta tersebut') di premis Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua.

3. Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua telah memberikan satu akujanji bahawa:

i. Mereka adalah pihak yang diberi kuasa dan mempunyai hak di sisi undang-undang untuk menjual kereta tersebut; dan

ii. kereta tersebut tidak mempunyai sebarang kecacatan dan tidak pernah diusik pada pembinaan, struktur, nombor chasis, nombor enjin atau mana-mana nombor pengenalan lain.

4. Defendan telah membeli kereta tersebut daripada Pihak Ketiga Pertama dan Pihak Ketiga yang Kedua berdasarkan akujanji yang diplidkan diatas dan memasuki perjanjian sewa beli yang bertarikh 6.9.2013 dengan Plaintif bersandarkan kepada akujanji Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua.

5. Dan dalam apa cara sekalipun akujanji tersebut adalah terma tersirat penjualan kenderaan tersebut dari Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua kepada Defendan menurut seksyen 14(a) Akta 382.

Sekiranya tuntutan Plaintif dibenarkan terhadap Defendan disini maka la bermakna akujanji serta terma jualan yang diberikan oleh Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua telah dimungkiri dibawah seksyen 14(a) Akta 382.

7. *Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga yang Pertama dan Pihak Ketiga yang Kedua secara bersesama dan berasingan* dengan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak.

Puspakom Sdn Bhd (Pihak Ketiga yang Ketiga)

8. Pihak Ketiga yang Ketiga merupakan pihak yang telah meluluskan pemeriksaan dan mengeluarkan sijil pemeriksaan tukar milik yang bertarikh 27.8.2013 yang mana Defendan sandarkan kepadanya sebelum Perjanjian Sewa Beli yang bertarikh 6.9.2013 dimasuki diantaranya dengan Plaintif.

Sekiranya tuntutan Plaintif terhadap Defendan dibenarkan maka ia bermakna Pihak Ketiga yang Ketiga telah cuai, lalai dan/atau gagal dalam melaksanakan pemeriksaan sewajarnya ke atas kereta tersebut dan/atau melaporkan keadaan yang sebenarnya.

Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga yang Ketiga secara bersesama dan berasingan dengan Pihak Ketiga yang Pertama, Pihak Ketiga yang Kedua dan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak.

Pengarah Jabatan Pengangkutan Jalan Negeri Perak
(Pihak Ketiga yang Keempat)

1. Pihak Ketiga Yang Keempat selaku pihak yang menyimpan dan mengekalkan sistem pendaftaran kenderaan bermotor.

2. Sekiranya tuntutan Plaintif terhadap Defendan dibenarkan maka ia bermakna Pihak Ketiga Yang Keempat telah gagal dalam menyimpan dan menyenggara sistem pendaftaran kenderaan bermotor yang tepat dan boleh dipercayai.

3. Oleh itu, Pihak Ketiga Yang Keempat telah gagal untuk mengemaskini sistem maklumat untuk mencerminkan status kesesuaian kenderaan tersebut untuk antara lain disewa beli.

4. Ini juga bermakna, Pihak Ketiga Yang Keempat telah cuai, lalai dan/atau gagal dalam mengemaskini pendaftaran dan maklumat sistem dengan maklumat yang terbaharu termasuk kegagalan untuk mengemaskini sistem maklumat diantaranya dari pihak Polis Diraja Malaysia.

5. *Sekiranya Defendan disini adalah bertanggungan kepada Plaintif, maka Defendan berhak ditanggung rugi oleh Pihak Ketiga Yang Keempat secara bersesama dan berasingan dengan Pihak Ketiga yang Pertama, Pihak Ketiga yang Kedua dan Pihak Ketiga yang Ketiga terhadap tuntutan Plaintif tersebut beserta kos* yang harus dibayar oleh Defendan termasuk kos membela tuntutan Plaintif di dalam ini dan kos notis ini beserta faedah berhak.
(emphasis added)

[32] Having dismissed the main action, the court finds there is no purpose in maintaining the third-party action as there is no liability attached to the respondent that would justify seeking indemnity from the third parties. As established in *Chang Chor Heong* (*supra*) and *Inai Bina* (*supra*), a third-party claim based solely on indemnity cannot stand when the primary claim against the respondent has been struck out. The Sessions Court's decision to strike out the third-party proceeding is correct. Therefore, the second appeal is accordingly dismissed, as it no longer serves any legal purpose. However, the Sessions Court's costs order in favour of the respondent remains intact.

Conclusion

[33] Based on the foregoing, the appellant's appeal in the first appeal is dismissed against the respondent as it is unsustainable in law. The vesting order effectively transferred all rights and liabilities to Aiqon Amanah, making any claim against the respondent improper. Accordingly, I also dismiss the second appeal as I find there is no purpose in maintaining the third-party action as there is no liability attached to the respondent for there to be an indemnity against the third parties.

[34] In respect of the first appeal (AA-12ANCC-1-01-2024), encl. 1 is dismissed, with costs of RM2,000 awarded to the respondent and RM1,000 awarded separately to each of the third parties. In respect of the second appeal (AA-12ANCC-2-01-2024), encl. 1 is dismissed without any order as to costs.